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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS JUAN SWITT,

Defendant and Appellant.

B222293

(Los Angeles County  
Super. Ct. No. KA087803)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Daniel J. Buckley, Judge. Affirmed.

Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Carlos Juan Switt appeals the judgment entered following his plea of nolo contendere to one count of possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a). Appellant admitted that he had one prior strike within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and was sentenced to four years.

On August 7, 2009, appellant was arrested on a parole violation for being in possession of a weapon (a knife). While appellant was being booked at the jail, four baggies containing methamphetamine fell out of his sock.

Appellant was charged by information with one count of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and one count of bringing drugs into a jail (Pen. Code, § 4573). The information further alleged that appellant had a prior strike (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and that he had suffered three prior convictions and served prison terms within the meaning of Penal Code section 667.5.

Appellant entered not guilty pleas to both counts. Appellant also filed a *Marsden* motion, seeking substitute counsel. (*People v. Marsden* (1970) 2 Cal.3d 118.)

During the hearing on his *Marsden* motion, appellant contended that defense counsel had not asked him about the case and only wanted him to accept the plea, and that he just wanted to have his strike stricken. He contended that he was intoxicated when he was arrested and that he forgot the methamphetamine was in his sock. Defense counsel responded that she had discussed with appellant the facts of the case, his prior strike, the likelihood of the court dismissing the prior strike, the plea offer, and numerous other matters relating to his case. The court explained to appellant that defense counsel was giving him correct information about his prior strike, that her advice was correct, and that she was a very experienced attorney. Appellant asserted that he was merely trying to have his strike stricken, but the court explained that that was very unlikely.

The court denied appellant's *Marsden* motion, finding that defense counsel had communicated sufficiently with appellant and represented him properly, would continue

to do so, and that there was no breakdown in the relationship. Appellant asked if he could represent himself, and the court said that he could, although the court strongly recommended against it. Appellant then asked for “a state-appointed attorney or something,” but the court explained that his defense counsel was a public defender appointed by the court, and that she would do a better job than appellant could do if he represented himself. After the *Marsden* hearing, appellant rejected the plea offer of 44 months.

At a subsequent hearing on November 19, 2009, appellant requested a continuance because he had retained private counsel, although he did not know the attorney’s name. The court told appellant that if he did not even know the new attorney’s name, the trial would begin on November 23 with appointed defense counsel. Appellant stated, “I really want to fire [appointed counsel], but you guys didn’t let me.” The court replied that it would keep November 23 as the trial date.

On November 23, 2009, appellant entered into a plea agreement, pursuant to which he would plead no contest to count one, possession of methamphetamine, admit the allegation of a prior strike, and receive a sentence of four years. The prosecutor explained appellant’s rights to him, determined that appellant had reviewed the plea agreement with his attorney and understood it, explained the terms of the agreement to appellant, and determined that the plea was voluntary. Appellant pled no contest to the charge of possession of a controlled substance and admitted that he suffered a prior conviction for first degree residential burglary in June 2003. The court found that the plea and admission were knowingly and intelligently made and that appellant freely and voluntarily gave up his rights. Counsel stipulated to a factual basis based on the preliminary hearing transcript, and the court found there was a factual basis for the plea.

Pursuant to the plea agreement, the court sentenced appellant to the mid-term of two years, doubled to four years for the prior strike. The court gave appellant credit for 109 days of actual custody and 54 days of good time/work time credit for a total of 163 days and imposed various fines and fees. The court dismissed count two.

Appellant filed a notice of appeal and requested a certificate of probable cause, asserting as grounds for his request the denial of his motion for substitute counsel and the failure to strike his prior conviction. Appellant further asserted that the prosecutor “was harassing my girlfriend trying to take her out to dinner,” and that he was denied the right to a fair trial. The court denied his request for a certificate of probable cause.

After review of the record, appellant’s court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On May 27, 2010, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On June 21, 2010, appellant filed a letter brief, contending that he was threatened with a sentence of 25 years to life in order to pressure him into accepting the plea agreement. He further contends that he was denied the right to counsel because he wanted to fire his public defender and hire private counsel or represent himself. He asserts that his prior strike should have been stricken.

A certificate of probable cause is required for an appeal challenging the validity of a plea. (Pen. Code, § 1237.5; *People v. Brown* (2010) 181 Cal.App.4th 356, 359 (*Brown*).) Because appellant failed to obtain a certificate of probable cause, he is precluded from challenging the validity of his plea and from challenging the validity of his sentence, which was part of his negotiated plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76-78.)

One exception to the requirement of a certificate of probable cause is “where the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under section 1538.5, subdivision (m). [Citation.]” (*Brown, supra*, 181 Cal.App.4th at p. 360.) Appellant’s notice of appeal states that he is appealing from a denial of a motion to suppress evidence, but he did not make such a motion.

Appellant’s alleged *Marsden* error occurred prior to his plea and so is not cognizable on appeal. (Pen. Code, § 1237.5; see *People v. Vera* (2004) 122 Cal.App.4th

970, 978 [concluding that the defendant was not required to obtain a certificate of probable cause to challenge the denial of his postplea *Marsden* motion]; *People v. Lovings* (2004) 118 Cal.App.4th 1305, 1312 [finding that the appellant's guilty plea precluded him from raising a pre-plea *Marsden* claim, despite having obtained a certificate of probable cause]; *People v. Lobaugh* (1987) 188 Cal.App.3d 780, 786 [concluding that the defendant, who did not obtain a certificate of probable cause, was precluded from raising a pre-plea *Marsden* issue on appeal].)

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

#### **DISPOSITION**

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.